

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK04-83795
)
CHRISTOPHER MICHAEL McVAY and)
CONSTANCE MARY BROOKS-McVAY,) CH. 13
)
Debtor(s).)

ORDER

Hearing was held in Omaha, Nebraska on June 16, 2008, regarding Filing #44, Motion for Relief from Stay, filed by DaimlerChrysler Financial Services Americas, L.L.C., and Filing #49, Resistance, filed by the debtors. Ronald Hunter appeared for the debtors and Kathryn Klein appeared for DaimlerChrysler Financial Services Americas, L.L.C.

At Filing #54, filed on February 14, 2008, the court deferred ruling on the pending motion for relief to permit the debtors to provide proof that they could, within a reasonable time, cure the delinquency to the moving party. In that order, it was determined that the movant is significantly over-secured with regard to the debtors' vehicle.

A supplementary hearing was held on June 16, 2008. The movant, at Filing #71, an affidavit executed by an employee of the movant, informs the court that debtors are significantly delinquent on their payments. Through oversight by the court, Filing #71 was not admitted into evidence, but the court does, at this time, take judicial notice of its contents.

Filing #72, the declaration of Christopher McVay, was admitted into evidence at the hearing. It informs the court that Mr. McVay has received a determination from a Social Security Administration administrative law judge that grants him disability payments of approximately \$1,000.00 per month. He also anticipates a substantial Social Security disability payment for retroactive benefits.

The court requested that counsel for the debtors obtain and file a copy of the written evidence of the decision of the administrative law judge. That document, Filing #74, was filed on June 17, 2008. It does appear that, subject only to a possible internal review by the Social Security Administration, that Mr. McVay has been awarded disability pay and should begin receiving it in July or August of 2008. The court takes judicial notice of Filing #74 and the attached letter from the Social Security Administration.

IT IS ORDERED: Based upon the representations of Mr. McVay in Filing #72 and the administrative law judge award in Filing #74, and based upon the fact that no additional evidence has been presented by either side which would indicate that the movant is no longer over-secured, the motion for relief (Fil. #44) is once again deferred. If the debtors fail to bring the delinquency current by August 31, 2008, the case will probably be dismissed, but, at the very least, the moving party shall receive relief from the automatic stay.

DATED: June 23, 2008.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

*Ronald Hunter
Kathryn Klein
Kathleen Laughlin
U.S. Trustee

Movant (*) is responsible for giving notice to other parties if required by rule or statute.